



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 120

[Docket No.: FAA-2012-0688; Notice No. 12-04]

RIN 2120-AK01

Combined Drug and Alcohol Testing Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking would allow air carrier operators and commuter or on-demand operators that also conduct commercial air tour operations to combine the drug and alcohol testing required for each operation into one testing program. The current rule requires those operators to conduct separate testing programs for their air tour operations. This results in an unnecessary duplication of effort. The intended effect of this rulemaking is to decrease operating costs by eliminating the requirement for duplicate programs while maintaining the level of safety intended by the current drug and alcohol testing regulations. This proposal would also clarify existing instructions within the rule, correct an inadvertent typographical error, clarify an existing requirement by rearranging its numerical order, and remove language that describes a practice that has been discontinued.

DATES: Send comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2012-0688 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the Federal Register published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground

Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Rafael Ramos, Office of Aerospace Medicine, Drug Abatement Division, AAM-800, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8442; facsimile (202) 267-5200; e-mail: drugabatement@faa.gov.

For legal questions concerning this action, contact Neal O'Hara, Attorney, Regulations Division, AGC-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5348.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A Chapter 451, Section 45102 -- Alcohol and Controlled Substances Testing. Under that section, the FAA is charged with prescribing regulations for air carriers to establish and to conduct pre-employment, reasonable suspicion, random and post-accident drug and alcohol testing. Parts of this rule, for example those sections dealing with contract air traffic controllers, were promulgated under the FAA's general rulemaking authority in 40 U.S.C. 44701(a)(5). This regulation is within the scope of that authority.

I. Overview of Proposed Rule

Some part 121 air carrier operators and part 135 flight-for-hire and on-demand operators also conduct commercial air tours. Parts 121 and 135 each contain requirements for drug and alcohol testing and, until 2007, commercial air tour operators were required to be tested for drugs and alcohol under those parts.

In 2007, the National Air Tour Safety Standards rule (72 FR 6884, February 13, 2007) established a separate subpart in part 91 to govern commercial air tour operators. That rule contained requirements for drug and alcohol testing for commercial air tour operations that were separate from, and in addition to the testing required by parts 121 and 135. This proposal is intended to give part 121 and 135 operators with commercial air tour operations the option of administering one drug and alcohol testing program for both operations. The intent of this action is to lessen the administrative burden on such operators. In addition, this rulemaking would make it clear that operators must obtain a Letter of Authorization from the local Flight Standards District Office in order to conduct air tour operations. It would correct the omission of a reference indicating that on-duty use of alcohol is grounds for permanent disqualification from service. That reference was inadvertently left out of the May 2009 Drug and Alcohol Testing Program final rule. This rulemaking would reorganize existing rule text to alleviate any confusion about the requirement that supervisory training, as well as employee training, must be documented as part of each employer's employee assistance program (EAP). Finally, this rulemaking would make it clear that the agency's practice of approving the employer's drug and alcohol testing plan has been discontinued

II. Background

On May 14, 2009, the FAA published a final rule titled “Drug and Alcohol Testing Program” (74 FR 22653) that moved the drug and alcohol testing regulations into a new part 120.

Part 120 of Title 14 prescribes, in pertinent part, a drug and alcohol testing program designed to prevent accidents and injuries that result from the use of prohibited drugs and the misuse of alcohol. Specifically, the rule requires implementation of a drug and alcohol testing program by three groups of operators:

- Part 119 certificate holders authorized to conduct part 121 operations.
- Part 119 certificate holders authorized to conduct 135 operations.
- Air Tour operators defined in § 91.147.

These requirements are meant to ensure that any person who performs safety-sensitive functions, directly or by contract (including subcontractor at any tier), is subject to drug and alcohol testing.

Under the current rules, operators who are conducting part 121 or part 135 operations and also conducting commercial air tour operations must implement separate drug and alcohol testing programs as if each operation is conducted by different companies. These operators are petitioning the FAA for exemption from the requirement to maintain two drug and alcohol testing programs. They are asking to have a single FAA-regulated drug and alcohol testing program because having two such programs often requires testing the same employees twice. This duplication of testing unnecessarily adds administrative and financial burdens for the operator. The

operators also suggest that the additional burden of maintaining two separate testing programs yields no corresponding increase in safety for the public.

Between 2008 and 2010 the FAA has granted approximately 50 exemptions allowing operators to implement a single testing program. Given the large number of exemptions that the Agency has granted, the FAA believes it is appropriate to simply amend the existing rule. This approach relieves operators from seeking an operator-specific exemption. In granting these exemptions, the FAA has recognized that in most cases, the same employees and equipment are used interchangeably between the part 121 or 135 operation and commercial air tour operation. Therefore, the FAA has found that when a part 119 certificate holder operates both a part 121 or a part 135 operation and a § 91.147 air tour operation, combining the two testing programs maintains a level of safety equivalent to that provided by the current regulations. Under one testing program employees are still subject to drug and alcohol testing in accordance with part 120.

III. Discussion of the Proposal

This proposal would give part 121 and 135 operators the option to combine the drug and alcohol testing programs for a part 121 or part 135 operation with the program for a part 91 commercial air tour operation. It is expected that this proposal would relieve the existing regulatory burden of requiring a part 121 or 135 operator to maintain a separate testing program for its part 91 commercial air tour operation. We believe that this will have a positive economic impact.

This proposal would amend §§ 120.117 and 120.225 to give a part 121 or part 135 operator the option of including its commercial air tour operation employees under §91.147 in a combined drug and alcohol testing program.

The removal of duplicate testing requirements would eliminate an unnecessary financial burden for the operators while still ensuring the level of safety required by the current rules. This proposal would also benefit such operators by eliminating the need to request an exemption from the FAA to combine drug and alcohol testing programs.

The part 121 or 135 operator is ultimately responsible for compliance with all requirements of part 120 for both the air carrier and air tour operations. For example, under a combined program, if the § 91.147 air tour operator hires a new pilot to conduct only air tour operations, and the operator fails to conduct the pre-employment drug test, the part 121 or part 135 operator will be responsible for the error. Any civil penalties for regulatory violations will be assessed at the part 121 or part 135 operator level, not at the level for a part 91 air tour operator. The part 121 or 135 air operator would be responsible for and would accept all compliance responsibility, regardless of the type of operation, when choosing to combine testing programs. This is consistent with the exemptions issued to part 119 certificate holders allowing them to combine their part 121 or part 135 operation drug and alcohol testing program with their § 91.147 air tour drug and alcohol testing program.

Current § 91.147 specifies that operators intending to begin commercial air tour operations must obtain a Letter of Authorization. The current § 120.117, which contains the drug and alcohol testing requirements that apply to air tour operations, refers to a need for operators intending to begin commercial air tours to “register with the FAA”.

This proposal would change that reference in § 120.117 to “Obtain a Letter of Authorization” in order to align it with the wording of § 91.147 and clarify the requirements—to make it clear that operators must obtain a Letter of Authorization from their local Flight Standards District Office if they intend to begin commercial air tour operations. This correction would provide clarity to such operators in the process of implementing their drug and alcohol testing program.

Finally, other errors in the Agency’s 2009 Drug and Alcohol Testing Program final rule have been brought to our attention. In § 120.221(b), “(c)” was inadvertently omitted in the reference to §§ 120.19 and 120.37. The omitted reference would indicate that one occurrence of on-duty alcohol use as described in §§ 120.19(c) and 120.37(c) carries the consequence of permanent disqualification from service. We are proposing to correct this error. Additionally, when we combined part 121 appendices I and J to form part 120, we renumbered the requirements. This reorganization has created some confusion. The requirement remains such that employers must include documentation of the training given to both supervisors and employees in their employee assistance programs. However, the requirements are currently numbered in such a way that it appears that employers need only retain employee training records. We propose to reorder the wording to make the requirement clear that supervisory training must be documented as well. Finally, in 2004, we discontinued the practice of approving drug and alcohol testing plans. That language was never removed from the Code of Federal Regulations. However, we are proposing to remove it now.

IV. Regulatory Notices and Analyses

Introduction

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Regulatory Evaluation

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a

determination has been made for this proposed rule. The reasoning for this determination follows:

(1) The proposed rule is voluntary. It does not impose new regulatory requirements. For entities that choose to follow this proposed rule, it is likely that regulatory requirements and costs would be reduced.

(2) The proposed rule is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866;

(3) The proposed rule would not have a significant economic impact on a substantial number of small entities;

(4) The proposed rule would not have a significant effect on international trade; and

(5) The proposed rule would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the monetary threshold identified.

This rulemaking would allow part 119 certificate holders with operations under part 121 or 135 who also conduct commercial air tour operations under § 91.147 to combine drug and alcohol testing programs. The current rule requires the part 121 operator or part 135 operators to conduct a separate testing program for its air tour operations resulting in an unnecessary duplication of effort. The intended effect of this rulemaking is to decrease operating costs by eliminating the requirement of duplicate programs while maintaining the level of safety required by the current drug and alcohol testing regulations. In addition, this rulemaking would allow the agency to clarify that air tour operators must obtain a Letter of Authorization from the local Flight

Standards District Office. This rulemaking would allow the agency to address the omission of a reference indicating that on-duty use of alcohol is grounds for permanent disqualification from service. The reference was inadvertently omitted from the May 2009 Drug and Alcohol Testing Program final rule. This rulemaking would also allow the agency to clarify the requirement that documentation of both employee training as well as supervisory training must be a component of each employer's employee assistance program (EAP). Finally, this rulemaking would make it clear that the practice of agency approval of the employer's drug and alcohol testing plan has been discontinued.

Although the FAA cannot quantify the benefits of the proposed rule, the FAA believes that the cost savings associated with reducing the costs of compliance could be significant. The FAA therefore believes that the proposed rule would be cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Size Standards

Size standards for small entities are published by the Small Business Administration (SBA) on their website at <http://www.sba.gov/size>. The size standards used herein are from “SBA U.S. Small Business Administration, Table of Small Business Size Standards, Matched to North American Industry Classification System Codes”. The Table is effective November 5, 2010, and uses the 2007 NAICS codes. Scheduled Passenger Air Transportation is listed in Sector 48-49-Transportation and Warehousing; Subsector 481- Air Transportation; NAICS Code 48111. Non-Scheduled Chartered Passenger Air Transportation is listed under the same Sector and Subsector with NAICS code 481211. In both cases the small entity size standard is 1,500 employees.

It is estimated that most of the air carriers involved in this type of activity are small entities. Therefore the proposed rule would affect a substantial number of small entities.

However, the proposed rule imposes no costs and may result in a cost reduction for an entity that should choose to use the proposed rule. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact, and therefore no effect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a

mandate is deemed to be a “significant regulatory action”. The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II do not apply.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FAA has determined that there would be no new information collection associated with the proposed requirement that would allow operators to combine drug and alcohol testing programs. Combining programs would reduce the paperwork burden for drug and alcohol testing.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under

the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would only affect operators' drug and alcohol testing programs and not their operations, it would not affect intrastate aviation in Alaska.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

(May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information

Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in

the FOR FURTHER INFORMATION CONTACT section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies; or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 120

Alcoholism, Air carriers, Air traffic control, Airmen, Alcohol abuse, Alcohol testing, Aviation safety, Charter flights, Commercial air tour operators, Contract air traffic controllers, Drug abuse, Drug testing, Operators, reporting and recordkeeping requirements, Safety, Safety-sensitive, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 120—DRUG AND ALCOHOL TESTING PROGRAM

1. The authority citation for part 120 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101–40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 45101–45105, 46105, 46306..

2. Amend § 120.115 as follows:

- a. Revise paragraph (c)(1)(iii) and redesignate it as (c)(5);
- b. Revise paragraph (c)(5) and redesignate it as (c)(6);

§ 120.115 Employee Assistance Program (EAP).

* * * * *

(c) * * *

(5) Documentation of all training given to employees and supervisory personnel must be included in the training program.

(6) The employer shall identify the employee and supervisor EAP training in the employer's drug testing plan.

3. Amend § 120.117 as follows:

a. Revise paragraphs (a) and (b);

b. Revise paragraph (e) and redesignate it as (f);

c. Add new paragraph (e)

§ 120.117 Implementing a drug testing program.

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization or Drug and Alcohol Testing Program Registration from the FAA:

If you are . . .	You must . . .
(1) A part 119 certificate holder with authority to operate under part 121 or 135	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.

(2) An operator as defined in §91.147 of this chapter	Obtain a Letter of Authorization by contacting the Flight Standards District Office nearest to your principal place of business.
(3) A part 119 certificate holder with authority to operate under part 121 or 135 and an operator as defined in §91.147 of this chapter	Complete the requirements in sections 1 and 2 of this chart and advise the Flight Standards District Office and the Drug Abatement Division that the §91.147 operation will be included under the part 119 testing program.
(4) An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.
(5) A part 145 certificate holder who has your own drug testing program	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, if you opt to conduct your own drug testing program.
(6) A contractor who has your own drug testing program	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence

	Avenue, SW., Washington, DC 20591, if you opt to conduct your own drug testing program.
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(b) Use the following chart for implementing a drug testing program if you are applying for a part 119 certificate with authority to operate under parts 121 or 135 of this chapter, if you intend to begin operations as defined in §91.147 of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization or Drug and Alcohol Testing Program Registration from the FAA. Your employees who perform safety-sensitive functions must be tested in accordance with this subpart. The chart follows:

If you . . .	You must . . .
(1) Apply for a part 119 certificate with authority to operate under parts 121 or 135	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification,
	(ii) Implement an FAA drug testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(2) Intend to begin operations as defined in §91.147 of this chapter	(i) Have a Letter of Authorization,

	(ii) Implement an FAA drug testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(3) Apply for a part 119 certificate with authority to operate under parts 121 or 135 and intend to begin operations as defined in §91.147 of this chapter	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification and a Letter of Authorization,
	(ii) Implement your combined FAA drug testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(4) Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military)	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 prior to starting operations,
	(ii) Implement an FAA drug testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.

* * *

(e) *Obtaining a Letter of Authorization from the FAA.* (1) To obtain a Letter of Authorization from the FAA, you must submit, in duplicate, the following information to the Flight Standards District Office nearest your principal place of business:

- (i) Company name.
 - (ii) Telephone number.
 - (iii) Address where your drug and alcohol testing program records are kept.
 - (iv) Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).
 - (v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.
 - (vi) A signed statement indicating that your company will comply with this part and 49 CFR part 40.
- (2) This Letter of Authorization will satisfy the requirements for both your drug testing program under this subpart and your alcohol testing program under subpart F of this part.
- (3) Update the Letter of Authorization information as changes occur. Send the updates, in duplicate, to the Flight Standards District Office nearest your principal place of business.
- (4) If you are a part 119 certificate holder with authority to operate under part 121 or 135 and intend to begin operations as defined in § 91.147 of this chapter, you must also

advise the FAA's Drug Abatement Division at the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(f) *Obtaining a Drug and Alcohol Testing Program Registration from the FAA.* (1) To obtain a Drug and Alcohol Testing Program Registration from the FAA, you must submit, in duplicate, the following information to the Office of Aerospace Medicine, Drug Abatement Division:

(i) Company name.

(ii) Telephone number.

(iii) Address where your drug and alcohol testing program records are kept.

(iv) Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that: your company will comply with this part and 49 CFR part 40; and you intend to provide safety-sensitive functions by contract (including subcontract at any tier) to a part 119 certificate holder with authority to operate under part 121 or part 135 of this chapter, an operator as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

(2) Send this information, in duplicate, to the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(3) This Drug and Alcohol Testing Program Registration will satisfy the registration requirements for both your drug testing program under this subpart and your alcohol testing program under subpart F of this part.

(4) Update the registration information as changes occur. Send the updates, in duplicate, to the address specified in paragraph (f)(2) of this section.

4. Amend § 120.221 by revising paragraph (b) to read as follows:

§ 120.221 Consequences for employees engaging in alcohol-related conduct.

* * * * *

(b) *Permanent disqualification from service.* An employee who violates §§ 120.19 (c) or 120.37 (c), or who engages in alcohol use that violates another alcohol misuse provision of §§ 120.19 or 120.37, and who had previously engaged in alcohol use that violated the provisions of §§ 120.19 or 120.37 after becoming subject to such prohibitions, is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

* * *

5. Amend § 120.225 as follows:

- a. Revise paragraphs (a) and (b);
- b. Revise paragraph (e) and redesignate it as (f);
- c. Add new paragraph (e).

§ 120.225 How to implement an alcohol testing program.

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization or Drug and Alcohol Testing Program Registration from the FAA:

If you are . . .	You must . . .
(1) A part 119 certificate holder with authority to operate under part 121 or 135	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
(2) An operator as defined in §91.147 of this chapter	Obtain a Letter of Authorization by contacting the Flight Standards District Office nearest to your principal place of business.
(3) A part 119 certificate holder with authority to operate under part 121 or 135 and an operator as defined in §91.147 of this chapter	Complete the requirements in sections 1 and 2 of this chart and advise the Flight Standards District Office and Drug Abatement Division that the §91.147 operation will be included under the part 119 testing program.
(4) An air traffic control facility not operated by the FAA or by or under contract	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

to the U.S. Military	
(5) A part 145 certificate holder who has your own alcohol testing program	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 if you opt to conduct your own alcohol testing program.
(6) A contractor who has your own alcohol testing program	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 if you opt to conduct your own alcohol testing program.

(b) Use the following chart for implementing an alcohol testing program if you are applying for a part 119 certificate with authority to operate under part 121 or 135 of this chapter, if you intend to begin operations as defined in §91.147 of this chapter, or if you intend to begin operations as defined air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization or Drug and Alcohol Testing Program Registration from the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this subpart. The chart follows:

If you . . .	You must . . .
(1) Apply for a part 119 certificate with authority to operate under part 121 or 135	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification,
	(ii) Implement an FAA alcohol testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(2) Intend to begin operations as defined in §91.147 of this chapter	(i) Have a Letter of Authorization,
	(ii) Implement an FAA alcohol testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(3) Apply for a part 119 certificate with authority to operate under parts 121 or 135 and intend to begin operations as defined in §91.147 of this chapter	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification and a Letter of Authorization,
	(ii) Implement your combined FAA alcohol testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.

(4) Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military)	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 prior to starting operations,
	(ii) Implement an FAA alcohol testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.

* * *

(e) *Obtaining a Letter of Authorization from the FAA.* (1) To obtain a Letter of Authorization from the FAA, you must submit, in duplicate, the following information to the Flight Standards District Office nearest your principal place of business:

(i) Company name.

(ii) Telephone number.

(iii) Address where your drug and alcohol testing program records are kept.

(iv) Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that your company will comply with this part and 49 CFR part 40.

(2) This Letter of Authorization will satisfy the requirements for both your drug testing program under subpart E of this part and your alcohol testing program under this subpart.

(3) Update the Letter of Authorization information as changes occur. Send the updates, in duplicate, to the Flight Standards District Office nearest your principal place of business.

(4) If you are a part 119 certificate holder with authority to operate under part 121 or 135 and intend to begin operations as defined in § 91.147 of this chapter, you must also advise the FAA's Drug Abatement Division at the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(f) *Obtaining a Drug and Alcohol Testing Program Registration from the FAA.* (1) To obtain a Drug and Alcohol Testing Program Registration from the FAA you must submit, in duplicate, the following information to the Office of Aerospace Medicine, Drug Abatement Division:

(i) Company name.

(ii) Telephone number.

(iii) Address where your drug and alcohol testing program records are kept.

(iv) Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that: your company will comply with this part and 49 CFR part 40; and you intend to provide safety-sensitive functions by contract (including subcontract at any tier) to a part 119 certificate holder with authority to operate under part 121 or part 135 of this chapter, an operator as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

(2) Send this information, in duplicate, to the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(3) This Drug and Alcohol Testing Program Registration will satisfy the registration requirements for both your drug testing program under subpart E of this part and your alcohol testing program under this subpart.

(4) Update the registration information as changes occur. Send the updates, in duplicate, to the address specified in paragraph (f)(2) of this section.

Issued in Washington, DC on June 20, 2012.

Frederick E. Tilton, M.D.
Federal Air Surgeon

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